

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:19-cr-20463

v.

Honorable Thomas L. Ludington
United States District Judge

JUAN HERNANDEZ, SR.,

Defendant.

/

**ORDER DIRECTING CLERK OF COURT TO TRANSFER MOTION TO UNITED
STATES COURT OF APPEALS FOR SIXTH CIRCUIT**

In December 2019, Defendant Juan Hernandez, Sr. pleaded guilty to kidnapping, 18 U.S.C. § 1201(a). ECF No. 32. As part of his plea agreement, Defendant waived his right to appeal. *Id.* at PageID.88. He was sentenced to 188 months' imprisonment and four years' supervised release. ECF No. 58. On August 2, 2022, he filed a notice of appeal of his judgment. *See* ECF No. 60.

Defendant then filed a motion with this Court seeking "an extention [sic] on my 2255: Ineffective [sic] Counsel, because she Never put my Appeal in after I got sentenced last year." ECF No. 62 at PageID.203.

A notice of appeal generally "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal." *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (citing *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam)); *see also Workman v. Tate*, 958 F. 2d 164, 167 (6th Cir. 1992).

Defendant's Notice of Appeal divests this Court of jurisdiction to consider his Motion. Jurisdiction of Defendant's sentence transferred to the Sixth Circuit Court of Appeals upon the

filing of the Notice of Appeal of his Judgment; thus, Defendant's Motion seeking to vacate his sentence under § 2255, which involves Defendant's Judgment and sentence, may be addressed by only the Sixth Circuit. *See Grizzell v. Tennessee*, 601 F. Supp. 230, 232 (M.D. Tenn. 1984). This Court will, therefore, direct the Clerk of the Court to transfer Defendant's Motion to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1631.

Accordingly, it is **ORDERED** that the Clerk of the Court is **DIRECTED** to transfer Defendant's Motion, ECF No. 62, to the United States Court of Appeals for the Sixth Circuit under 28 U.S.C. § 1631.

Dated: August 24, 2022

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge